

The Corporation of the Town of Aurora

By-law Number XXXX-20

Being a By-law to regulate occupancy, fouling, construction and encroachments on highways.

Whereas Section 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, (the “Act”) as amended, provides that a municipality may pass by-laws respecting the health, safety and well-being of persons, services and things that the municipality is authorized to provide, protection of persons and property, public assets of the municipality, drainage and flood control, public utilities, parks, as well as highways and structures, including fences and signs;

And whereas Section 9 of the Act provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

And whereas Subsection 8(1) of the Act provides that powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

And whereas Sections 30 of the Act provides that the municipality has ownership over highways under its jurisdiction and Section 44 requires the municipality maintain its highways in a state of repair and to adhere to minimum maintenance standards outlined in regulations, including taking measures with respect to encroachments to protect users;

And whereas Subsection 391(1) of the Act provides that a municipality may pass by-laws imposing fees or charges on any persons for the use of its property including property under its control;

And whereas Section 446 of the Act provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law but has failed to do and to recover the costs of doing so by adding the costs to the tax roll and collecting them in the same manner as property taxes;

Now therefore the Council of The Corporation of the Town of Aurora hereby enacts as follows:

1. Definitions

1.1. In this by-law, the following words have the following meanings:

- (a) **“Act”** shall mean the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (b) **“Applicant”** shall mean the Person submitting an Application to the Town;
- (c) **“Application”** shall mean an application for a ROP or an application for an Encroachment, or for the renewal or extension of the same;
- (d) **“Arterial Road”** shall mean an Arterial Road as designated in the Town’s Official Plan, as amended or successor thereof;

- (e) **“Boulevard”** shall mean all parts of the Highway, including the shoulder and sidewalk, but excluding the curb and the road portion travelled by or designed for vehicular traffic;
- (f) **“Clerk”** shall mean the Clerk of the Town appointed pursuant to the Act;
- (g) **“Collector Road”** shall mean any Major and Minor Collector Road as designated in the Town’s Official Plan, as amended or successor thereof;
- (h) **“Council”** shall mean the Council of the Town;
- (i) **“Director”** shall mean the department head of the Operations Department of the Town, or his/her designate or successor;
- (j) **“Easement”** shall mean an interest in land owned by another Person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence agreement;
- (k) **“Encroachment”** shall mean anything that is placed, installed, constructed or planted within a Highway, including anything that is wholly upon or extends onto a Highway, that was not placed, installed, constructed or planted by the Town and shall include any aerial, surface or subsurface encroachment, but shall not include anything permitted pursuant to a ROP;
- (l) **“Encroachment Agreement”** shall mean an agreement with the Town granting authorization to erect, place or maintain an Encroachment on the Highway;
- (m) **“Encroachment Agreement Fee”** shall mean the fee as set out in the Town’s Fees and Charges By-law, as amended;
- (n) **“Encroachment Application Fee”** shall mean the fee as set out in the Town’s Fees and Charges By-law, as amended;
- (o) **“Geometric Design Guide”** shall mean the most current version of the Geometric Design Guide for Canadian Roads of the Transportation Association of Canada, as amended or successor thereof;
- (p) **“Highway”** shall mean a highway within the meaning of the Act;
- (q) **“Irrigation System”** shall mean the components of a system that is used or designed for the purpose of irrigating or watering vegetation located outdoors;
- (r) **“Local Road”** shall mean a Local Road as designated in the Town’s Official Plan, as amended or successor thereof;
- (s) **“Minimum Maintenance Standards for Municipal Highways”** means O. Reg. 239/02: Minimum Maintenance Standards for Municipal Highways, as amended or successor thereof;
- (t) **“Officer”** shall mean a Municipal Law Enforcement Officer appointed by the Town;
- (u) **“Owner”** shall mean the registered owner of a parcel of property as such Person is described on the most current parcel register;

- (v) **"Paver"** shall mean any hard or paved surface, or stone, that is placed in the ground in such manner that the top of the surface or stone is flat and level with the surrounding ground level;
- (w) **"ROP" or "Road Occupancy Permit"** shall mean a written permit issued by the Town pursuant to this by-law authorizing regulated activities under Subsection 2.1, other than for the erecting, installing or maintaining an Encroachment;
- (x) **"Person"** shall include an individual, sole proprietorship, partnership, unincorporated association, firm or corporation, business entity or club, trust, body corporate or natural person;
- (y) **"Premises"** shall mean a parcel of real property and includes all buildings and structures thereon;
- (z) **"Refuse"** shall mean any object or material that has been discarded by any Person or that is no longer in use, or reasonably intended to be used, by the Person having ownership or control over such object or material;
- (aa) **"Sign"** shall mean any structure or device, intended for identification or advertisement, visible to the general public;
- (bb) **"Soft Landscaping"** shall mean any shrubs, hedges, grass, flowers, maintained natural gardens or other vegetation, but excludes trees, noxious weeds and local weeds designated under the provisions of the *Weed Control Act*, R.S.O. 1990, c. W.5;
- (cc) **"Solicitor"** shall mean the Town Solicitor or his/her designate;
- (dd) **"Town"** shall mean The Corporation of the Town of Aurora; and
- (ee) **"Unauthorized Encroachment"** shall mean any Encroachment not authorized by this by-law.

2. General Prohibitions

- 2.1. No Person shall do, or shall cause to be done, or shall permit to be done, or shall attempt to do, on any portion of any Highway, any of the following actions without previously obtaining a ROP or entering into an Encroachment Agreement pursuant to this by-law permitting such action or activity, except where otherwise specifically permitted or exempted pursuant to this by-law:
 - (a) excavate, dig-up, break, tear-up, connect to, alter or destroy any portion of the land within the Highway whether for the purpose of constructing a means of access, or for any other purpose;
 - (b) cross any raised curb, sidewalk or paved Boulevard with a vehicle or with the aid of mechanical equipment, over which he/she has control, to deliver or remove any materials from abutting land;
 - (c) place, deposit, spill, track or otherwise leave on a Highway, any construction material, debris, soil, dirt, mud, stone, gravel, aggregate, concrete or any other similar material;
 - (d) place, construct or maintain any Encroachment on any Highway;

- (e) obstruct or block any Highway, including any culvert or ditch on any Highway.
- 2.2. In addition to the above, no Person shall throw or deposit any Refuse, including any animal carcass, on any Highway.
- 2.3. The Owner of the Premises from which, or to which, any material or items are being removed or deposited, placed, spilled or tracked shall be presumed to have caused such items or materials to be placed, deposited, spilled, tracked or otherwise left deposited on the Highway, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.
- 2.4. The Owner of the Premises from which, or to which, any vehicle crosses any curb, sidewalk or paved Boulevard to deliver or remove any items or material shall be presumed to have caused such vehicle to cross any curb, sidewalk or paved Boulevard, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.
- 2.5. The Owner of the Premises immediately adjacent to the land on which an Encroachment is located, shall be presumed to have caused to be placed, constructed or maintained the Encroachment, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.
- 2.6. Notwithstanding Subsections 2.1 and 2.2, the following classes of items and Encroachments, as well as activities related to such items and Encroachments, are exempted from the requirements and restrictions of this by-law to the extent of such other authority or agreement granting permission or authorization for such item or Encroachment:
 - (a) Signs and advertising devices, as authorized or permitted by the Sign By-law, as amended or a successor by-law thereof, or Council;
 - (b) Refuse or waste that is left or placed in compliance with the Waste Collection By-law, as amended or a successor by-law thereof;
 - (c) activities and Encroachments arising as a result of construction or maintenance activity on behalf of and under contract with the Town;
 - (d) any Highway closure authorized by the Town;
 - (e) Encroachments arising as a result of a decision of the Town's Committee of Adjustment or the Local Planning Appeal Tribunal, or a successor body thereof, permitting the Owner of a residential Premises to widen a driveway, provided such Encroachments are limited to Pavers that are in compliance with Section 3.2 and comprising of the permitted driveway extension, and that any other requirements set out under any other Town by-law are met;
 - (f) Encroachments permitted as a result of a written and signed agreement with the Town, other than an Encroachment Agreement, including any agreements pursuant to the *Planning Act*, R.S.O. 1990, c. P.13 or Easements agreements;
 - (g) any Encroachment specifically permitted by the Council;
 - (h) any Encroachments placed, created or caused by the Town;

- (i) any Encroachments authorized by a court order, or by provincial or federal authority or law, or
 - (j) any Encroachment authorized under a valid Encroachment Agreement that was entered into prior to the date of this by-law coming into force.
- 2.7. Notwithstanding Subsections 2.1 and 2.2, in the case of any activity, works, construction or Encroachments governed by a duly executed municipal access agreement with a utility company for access onto Town's Highways, the terms of any such agreement shall supersede this by-law in case of any conflict or inconsistency.

3. Permitted Encroachments

- 3.1. Notwithstanding Subsection 2.1 paragraph (d), Owners of land adjoining the Highway are permitted, without a ROP, Encroachment Agreement or any other authorization of the Town, to maintain Encroachments on the Boulevard:

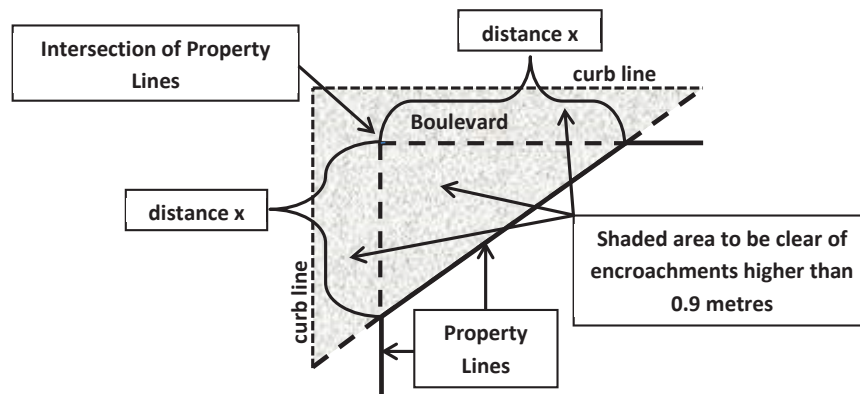
- (a) in the form of an Irrigation System;
- (b) in the form of Pavers; or
- (c) in the form of Soft Landscaping;

provided that the Encroachment conforms to all the requirements of this by-law, including Subsection 3.2. For clarity, this Subsection 3.1 does not authorize any Person to conduct any of the regulated activities under Subsection 2.1 without a ROP, other than maintaining one of the types of Encroachments described above to the extent that it does not consists of activities regulated under paragraphs (a), (b), (c) or (e) of Subsection 2.1.

- 3.2. Encroachments pursuant to Subsection 3.1 may only be permitted if the Encroachment conforms to the following:

- (a) if it is in the form of Soft Landscaping, it is maintained in a state of healthy and vigorous growth;
- (b) if it is in the form of Pavers, it is placed and maintained in compliance with any applicable laws and Town by-laws, including zoning by-laws and regulations;
- (c) if it is in the form of an Irrigation System:
 - (i) it is placed entirely under or in the ground and in such a way that no part of the system is located or protrudes above the level of the ground level, except for when the water discharge mechanism is in operation to actively irrigate as per the design of the system,
 - (ii) it is maintained in a manner that does not permit water to leak from it at any time other than when the system is in operation to actively irrigate as per the design of the system, and
 - (iii) the system is designed, constructed and functions in a manner that does not permit water to be sprayed or discharged onto the sidewalk or the travelled portion of the Highway;
- (d) it does not obstruct pedestrian or vehicle sight lines as per the Geometric Design Guide;

- (e) it does not interfere with traffic control devices or Signs permitted under the Sign By-law, as amended or a successor by-law thereof;
- (f) it does not interfere with ability of the Town to access and to conduct any maintenance, repair or operational activity on any Town property, infrastructure and municipal services;
- (g) it is not in a form of a fence or barrier, including barriers comprised of vegetation, that prevents access onto any part of the Highway or prevents Town staff or agents from being able to conduct any maintenance activity or to use any such area for storage of snow, unless it is located at the property line of the abutting private property and in compliance with any applicable zoning by-laws or regulations and the Fence By-law, all as amended or successor thereof;
- (h) it does not obstruct driveways, impede or pose a hazard or potential hazard to pedestrian or vehicle traffic;
- (i) on a corner lot, it is not erected or permitted to grow to a height greater than 0.9 metre above the traveled surface of the grade of the streets that abut the lot within the shaded triangular area as indicated below, with "distance x" being:
 - (i) in the case of an intersection between an Arterial Road with any other road, distance x, as illustrated below, shall be fifteen (15) metres in either direction;
 - (ii) in the case of an intersection between a Collector Road with another Collector Road, distance x, as illustrated below, shall be ten (10) metres in either direction;
 - (iii) in the case of an intersection between a Collector Road with a Local Road, distance x, as illustrated below, shall be seven (7) metres in either direction;
 - (iv) in the case of an intersection between a Local Road with another Local Road, distance x, as illustrated below, shall be five (5) metres in either direction;



- (j) it does not interfere with the Town's ability to maintain the Town's property, including Highways, in a state of good repair and maintenance, including keeping Town property free of litter, snow and ice;

- (k) it does not interfere with the existing and future locations of sidewalks, bicycle trails or utilities;
- (l) it does not extend into the Boulevard area fronting any property other than of the Owner that is responsible for such an Encroachment when the common lot line is projected perpendicular to the road, unless the Owner of such other property consents to it in writing;
- (m) no part of the Encroachment creates a condition or obstruction that results in any pedestrian path of travel not meeting any standard established pursuant to the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11 with respect to exterior paths of travel, regardless of when such path of travel was constructed or redeveloped;
- (n) no part of the Encroachment is located within 0.50 metre of the edge of either side of the sidewalk, unless it is in the form of a Paver;
- (o) if it is located on the Boulevard between the curb line and sidewalk, it does not measure more than 0.9 metre in height;
- (p) it is not within one (1) metre of the curb, on a road with curbs, unless it is in the form of a Paver;
- (q) it is not within three (3) metres of the vehicle traveled portion of any road without curbs, unless it is in the form of a Paver;
- (r) no part of the Encroachment is located within a one (1) metre radius around fire hydrants, fire hydrant valves or private water service shut off valves, unless it is in the form of a Paver;
- (s) no part of the Encroachment is located within a 1.5 metres of the side or rear of any hydro electric transformer, switch or equipment and no part is located in front of or at the opening side of such equipment at any distance, unless it is in the form of Paver;
- (t) it is in a state of repair pursuant to the Minimum Maintenance Standards for Municipal Highways; and
- (u) any other criteria considered appropriate by the Director.

4. Road Occupancy Permits

- 4.1. Any Person requesting authorization to conduct any of the regulated activities under Subsection 2.1 on a Highway is required to submit an Application to the Town for a ROP, unless such activities are otherwise authorized pursuant to Section 3, 5 or 6 with respect to an Encroachment, but only to the extent of such authorization.
- 4.2. The form, content, terms, conditions and requirements of the Application for a ROP shall be as prescribed by the Director from time to time and the Director may, without limiting the Director's authority to prescribe the Application and its form, content, terms, conditions and requirements, require as part of an Application:
 - (a) any affidavits, drawings, plans, surveys, photographs and other documents the Director deems to be necessary in order to assess the proposed Application;

- (b) any information deemed necessary by the Director to be able to evaluate the Application with respect to the proposed activities and the associated timeframes;
 - (c) a reasonable estimate of the cost of performing the associated works and a security deposit for such works;
 - (d) the Applicant to agree to the terms and conditions of the ROP as prescribed by the Director; and
 - (e) the Applicant to provide proof of and maintain continual insurance coverage, naming the Town as an additional insured party, as required by the Director to provide coverage with respect to the work and activities to be conducted or maintained on the Highway.
- 4.3. Upon receipt of an Application for a ROP and receipt of the applicable fees, as established in the Town's Fees and Charges By-law, the Director shall make investigations as necessary to assess the Application and may, in accordance with the criteria and requirements set out in this by-law:
- (a) issue a ROP after receipt of a complete Application that meets all the requirements of this by-law and the receipt of any applicable securities;
 - (b) in the case of an approved Application for a ROP, impose such terms and conditions on the ROP deemed appropriate by the Director:
 - (i) for the protection of any Highway, public infrastructure and property abutting the area subject to the ROP,
 - (ii) for the protection of the health and safety of the public and the environment,
 - (iii) for the purposes of administration of ROPs and the operations of the Town,
 - (iv) for the purposes of maintaining proper standards and workmanship with respect to any work conducted on the Highway,
 - (v) for the purposes of protecting the Town interests with respect to any risks associated with the work or activities pursuant to the ROP, and
 - (vi) to satisfy any requirements of this by-law or any other applicable legislation.
 - (c) refuse to issue a ROP if:
 - (i) the Application is not completed, all the information as required under this by-law is not provided or the Application does not meet all the requirements of this by-law,
 - (ii) the required fees or securities are not provided, or
 - (iii) the Applicant has not addressed, to the Director's satisfaction, any non-compliance or default with respect to a previous ROP.
- 4.4. In addition to the above, the Director may, on his or her own initiative, acting reasonably:

- (a) alter or revoke the terms and conditions of a ROP after it has been issued;
or
- (b) impose new terms and conditions in a ROP.

4.5. A ROP holder shall immediately inform the Director of any change to:

- (a) the information contained in an Application for a ROP;
- (b) the information contained in a ROP that has been issued;
- (c) the characteristics of the activity or work for which the ROP has been issued; or
- (d) the cancellation of any related activity or work.

In the case of any such change, the Director may require revised or additional information, additional fees, or a new Application with respect to the change.

4.6. A ROP shall be time limited and shall expire pursuant to the terms and conditions as set out in the ROP, upon completion of the work or activity governed by the ROP or revocation of such ROP, whichever occurs first.

4.7. Prior to the expiry of an ROP, a ROP holder may apply for an extension to the ROP, and the Director may approve of such extension, having regard to:

- (a) the work to be completed during the extension;
- (b) the progress of the work up until the date of the Application;
- (c) the performance of the ROP holder up until the date of the Application;
- (d) any potential conflict that may result from the extension with other planned or ongoing work; and
- (e) the safety and convenience of the public.

4.8. A ROP issued under this by-law is the property of the Town and is not transferrable or assignable.

4.9. The Director may revoke a ROP if the ROP holder, or parties conducting the work or activities pursuant to the ROP on behalf of the ROP holder:

- (a) fail to comply with the terms and conditions of such a ROP or fail to comply with this by-law;
- (b) fail to notify the Director immediately of any of the changes referred to in Subsection 4.5 of this by-law;
- (c) fail, within thirty (30) days after the issuance of the ROP, to commence the work or activity, beyond a preliminary or nominal level, for which the ROP was obtained;
- (d) substantially discontinue the work or activity for a period of more than thirty (30) days;
- (e) provide false or inaccurate information in the Application for the ROP; or

- (f) any Person doing work on behalf of the ROP holder has failed to comply with any applicable law, statutes, regulations, orders, standards, codes, by-laws or rules.
- 4.10. In addition to the above, the Director may immediately suspend or revoke a ROP issued under this by-law, in writing, where the Director is satisfied that a suspension or revocation is necessary in an emergency situation of immediate threat or danger to a Highway, public infrastructure, any property abutting a Highway, or to any Person.
- 4.11. The Director may give notice of the suspension or revocation of a ROP by contacting a ROP holder in writing, by telephone or by email in accordance with the contact information provided on the ROP Application.
- 4.12. Notwithstanding anything in this by-law, if the Director or an Officer deems that an emergency exists, or may ensue, as a result of any activities pursuant to a ROP, as a result of expiry, revocation or suspension of a ROP, or as a result of activities requiring a ROP that were conducted without a valid ROP, being, or about to become, a source of danger to the health and safety of the public or to a Highway or public infrastructure, the Director or Officer may take such measures, without notice, as the Director or Officer may deem necessary to remove the danger or potential danger at the expense of the Person responsible for creating the danger, or potential danger.
- 4.13. Any decision of the Director pursuant to this Section shall be final without a right to appeal to the Council.

5. Encroachment Application

- 5.1. Any Person requesting authorization to erect, install or maintain an Encroachment on a Highway that is not permitted under Subsection 3.1 or otherwise permitted under this by-law, is required to submit an Application to the Director for permission for the Encroachment.
- 5.2. The form and content of the Application for an Encroachment shall be as prescribed by the Director from time to time and the Director may require as part of an Application:
 - (a) any affidavits, drawings, plans, surveys, photographs and other documents the Director deems to be necessary in order to assess the proposed Application;
 - (b) any information deemed necessary by the Director to be able to evaluate the Application with respect to the proposed activities and the associated timeframes; and
 - (c) a reasonable estimate of the cost of performing the associated works.
- 5.3. Upon receipt of an Application for an Encroachment and receipt of the Encroachment Application Fee, the Director shall make investigations as necessary to assess the Application and may, in accordance with the criteria and requirements set out in this by-law:
 - (a) approve an Application for the Encroachment after receipt of a complete Application that meets all the requirements of this by-law;

- (b) in the case of an approved Application for an Encroachment, impose such terms and conditions to any associated Encroachment Agreement deemed appropriate by the Director:
 - (i) for the protection of any Highway, public infrastructure and property abutting the area subject to the Encroachment,
 - (ii) for the protection of the health and safety of the public and the environment,
 - (iii) for the purposes of administration of Encroachments and the operations of the Town,
 - (iv) for the purposes of maintaining proper standards and workmanship with respect to any work conducted on the Highway, and
 - (v) for the purposes of protecting the Town interests with respect to any risks associated with the presence of the Encroachment or work or activities related to the Encroachments,
 - (vi) to satisfy any requirements of this by-law or any other applicable legislation.
- (c) refuse to approve an Encroachment if:
 - (i) the Application is not completed, all the information as required under this by-law is not provided or the Application does not meet all the requirements of this by-law,
 - (ii) the required fees are not provided, or
 - (iii) the Applicant has not addressed, to the Director's satisfaction, any non-compliance or default with respect to the Encroachment or a previous Encroachment Agreement related to the same Encroachment or property.

5.4. The Director may approve an Application for an Encroachment if the proposed Encroachment:

- (a) does not obstruct pedestrian or vehicle sight lines as per the Geometric Design Guide;
- (b) does not interfere with traffic control devices or Signs;
- (c) does not obstruct driveways, impede or pose a hazard or potential hazard to pedestrian or vehicle traffic;
- (d) does not interfere with the Town's ability to maintain the Town's property, including Highways, in a state of good repair and maintenance, including keeping Town property free of litter, snow and ice;
- (e) does not interfere with the existing sidewalks, bicycle trails and future locations of sidewalks, bicycle trails or utilities;
- (f) does not extend into the Boulevard area fronting any property other than of the Owner that is responsible for such an Encroachment when the common lot line is projected perpendicular to the road, unless the Owner of such other property consents to it in writing;

- (g) does not create a condition or obstruction that results in any pedestrian path of travel not meeting any standard established pursuant to the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 with respect to exterior paths of travel, regardless of when such path of travel was constructed or redeveloped;
- (h) is on a parcel that is directly adjacent to the parcel owned by the Applicant;
- (i) is in a state of repair pursuant to the Minimum Maintenance Standards for Municipal Highways; and
- (j) satisfies any other criteria considered appropriate by the Director.

For clarity, the Director is not required to approve any Application for an Encroachment pursuant to this Subsection, even if it satisfies all of the criteria set out above, and may choose to only approve Applications in exceptional circumstances as determined by the Director or pursuant to any internal policies established by the Director.

- 5.5. If granted approval pursuant to Subsection 5.3 for a specific Encroachment, an Owner of land adjoining the Highway is permitted to maintain such an approved Encroachment provided that he/she enters into an Encroachment Agreement, pursuant to the terms of this by-law, with respect to such an Encroachment and complies with all the terms of this by-law, any terms or conditions imposed by the Director under Subsection 5.3 and the associated Encroachment Agreement.
- 5.6. Notwithstanding anything in this by-law, the Director has the authority to allow an Encroachment and the authority to waive the requirement for an Encroachment Application or an Encroachment Agreement in cases of Encroachments that are deemed by the Director to be of trivial or inconsequential nature, but only if such Encroachments do not appear to pose any hazard to the health and safety of the public and do not interfere with any Town operations. In any case where an Encroachment is permitted pursuant to this Subsection, the Director has the authority to rescind any such permission or waiver, at any time and for any reason, and require that an Application be submitted and/or an Encroachment Agreement be entered into with respect to an Encroachment, or otherwise that such an Encroachment be removed pursuant to this by-law.
- 5.7. Any decision of the Director pursuant to this Section shall be final without a right to appeal to the Council.

6. Encroachment Agreement

- 6.1. Where an Application for an Encroachment has been approved by the Director pursuant to Subsection 5.3, the Owner of land adjoining the Highway that intends to or has placed an Encroachment shall enter into an Encroachment Agreement with the Town and pay the Encroachment Agreement Fee, as set out in the Fees and Charges By-law in effect at the time of approval by the Director of the Application.
- 6.2. Where an Applicant fails to pay the Encroachment Agreement Fee within thirty (30) calendar days of receipt of notice of approval by the Director or where the Applicant fails to execute an Encroachment Agreement within the thirty (30) calendar days, or such longer period the Director deems appropriate at his/her discretion, from receipt of the Encroachment Agreement from the Town, the Applicant shall be deemed to have abandoned its Application and such

Encroachment, if already placed, shall be immediately removed from the Highway by the Applicant and at the Applicant's expense and any associated Application or approval for an Encroachment shall be deemed to be void and the Applicant shall not be entitled to any refund of fees remitted to the Town.

- 6.3. Any Encroachment Agreement entered into by the Town, in addition to any terms and conditions imposed by the Director pursuant to paragraph (b) of Subsection 5.3, shall to the satisfaction of the Solicitor:
- (a) require the Applicant to indemnify the Town for any claims, damages or causes of action that may arise as a result of the Encroachment;
 - (b) release the Town from and waive any claims the Applicant has or may have in the future with respect to the Encroachment and any actions or omissions of the Town in relation to the Encroachment, including damage, inspection, maintenance and removal;
 - (c) require the Applicant to provide the Town with comprehensive general liability insurance, satisfactory to the Solicitor, against any occurrence of injury, death or property damage resulting from the Encroachment; and
 - (d) be subject to any requirements of this by-law.
- 6.4. Any Encroachment Agreement entered into by the Town may, subject to the discretion of the Director, be time limited or expire pursuant to the terms of such an agreement. Upon request from an Owner who is party to an Encroachment Agreement, the Director may renew or extend an Encroachment Agreement on terms satisfactory to the Director and the Solicitor provided that:
- (a) the Owner requesting the renewal or extension pays to the Town the extension/renewal fee, as set out in the Fees and Charges By-law in effect at the time of submitting the renewal/extension request;
 - (b) the Owner that is party to the Encroachment Agreement and the Encroachment that is subject to the agreement comply with all the requirements of this by-law and the associated Encroachment Agreement; and
 - (c) the Owner requesting the renewal or extension executes any amendment or other documentation required by the Solicitor in association with the extension or renewal.
- 6.5. Where the Solicitor deems it appropriate, an Encroachment Agreement may be registered against title to the property of the Owner who is a party to the Encroachment Agreement and the Highway upon which the Encroachment exists and all expenses in doing so shall be paid for in advance by such Owner.
- 6.6. The entering into an Encroachment Agreement does not create any vested right in the Owner or occupant of the Premises to which the Encroachment is adjacent, or in any other Person, and the Encroachment Agreement may be terminated at any time in accordance with this by-law or the terms set out in the Encroachment Agreement.
- 6.7. Owners who are a party to an Encroachment Agreement shall notify future purchasers of any such Encroachment Agreement.

- 6.8. Any decision of the Director pursuant to this Section shall be final without a right to appeal to the Council.

7. Discontinuance of Encroachments

- 7.1. The Director may revoke an approval of an Encroachment and terminate any associated Encroachment Agreement if the Owner of Premises to which an Encroachment is adjacent provides notice to the Town that he/she wishes to permanently discontinue the Encroachment. If such notice is provided, such an Owner shall restore the Highway to the condition the lands were in prior to the placing of the Encroachment at his/her own expense and in compliance with this by-law.
- 7.2. If the Director is, at any time, of the opinion that a breach of the terms and conditions of an Encroachment Agreement has occurred and that the default has not been remedied, or where an Encroachment Agreement has expired, terminated or been invalidated, the Director may revoke the approval of an Encroachment and terminate any associated Encroachment Agreement. Following such revocation and/or termination, the Director shall cause a notice to be sent to the Owner of the Premises responsible for or associated to the Encroachment and upon the receipt of such a notice from the Town, such Owner shall have the Encroachment removed or filled in and closed up and the Highway be restored to the condition the lands were in prior to the placing of the Encroachment at the expense of the Owner.
- 7.3. Where the responsible Owner fails to have an Encroachment removed, filled in and/or closed up, as required by this Section within ten (10) business days of providing the notice pursuant to Subsection 7.1 or receiving the notice pursuant to Subsection 7.2, the Encroachment may be removed or filled in and closed up by the Town and the Highway restored to the condition the lands were in prior to the placing of the Encroachment at the expense of such Owner.

8. Removal of Encroachments

- 8.1. In addition to any other rights and remedies set out in this by-law, where the Town becomes aware of an Unauthorized Encroachment, including an Irrigation System, Soft Landscaping or Paver that does not comply with the requirements of this by-law, the Director or an Officer may:
- (a) give notice in writing to the Owner of the Premises to which an Unauthorized Encroachment is adjacent, to forthwith remove, fill in or close up the Unauthorized Encroachment and to restore the Highway to the condition the lands were in prior to the placing of the Encroachment at the expense of such Owner; or
 - (b) remove, fill in or close up any Encroachment without notice and require the Owner of the Premises to which an Unauthorized Encroachment is adjacent, to restore the Highway to the condition the lands were in prior to the placing of the Encroachment at the expense of such Owner.
- 8.2. Where the notice pursuant to paragraph (a) of Subsection 8.1 is not complied with within five (5) business days of the date of the notice, the Town may, on behalf of such noncompliant Owner, remove, fill in or close up the Unauthorized Encroachment and restore the Highway to the condition the lands were in prior to the placing of the Encroachment at the expense of such Owner.

- 8.3. Without limiting any rights and in addition to any remedies under this by-law, the Town may remove all parts of any item that creates, forms or contributes to an Unauthorized Encroachment, regardless of whether all such parts constitute an Unauthorized Encroachment or whether the removal of certain components of an Unauthorized Encroachment would render it compliant under this by-law. Without limiting the above, when an Encroachment grows or expands to a condition where it is not permitted under this by-law, the Town may remove the entire Encroachment from the Highway at the expense of the adjacent Owner.
- 8.4. Any materials or residue forming part of or attached to an Encroachment that are removed by or on behalf of the Town may, at the discretion of the Director or an Officer handling the matter, be deposited on the Premises of the Person responsible for such Encroachment, be deposited on the Premises that is adjacent to such Encroachment or be disposed of without notice to the Owner.
- 8.5. Notwithstanding anything in this by-law, if the Director or an Officer deems that an emergency exists, or may ensue, as a result of any Encroachment, regardless of whether or not it is authorized or permitted under this by-law, being, or about to become, a source of danger to the health and safety of the public or to a Highway or public infrastructure, or if the Director deems that an Encroachment, regardless of whether or not it is authorized or permitted under this by-law, is required to be removed, entirely or in part, for the purpose of conducting any construction or operations by the Town or any Town service, the Director or Officer may:
- (a) provide written notice to the Owner of the Premises to which the Encroachment is adjacent, or otherwise deemed by the Director or Officer to be responsible such Encroachment, requiring the repair, removal, filling in or closing up of the Encroachment and restoration of the Highway at the expense of such Owner, and/or
 - (b) take such measures, without notice, as the Director or Officer may deem necessary to remove the danger or potential danger created by the Encroachment at the expense of the Owner of the Premises to which the Encroachment is adjacent, or otherwise at the expense of such Person deemed by the Director or Officer to be responsible such Encroachment.
- 8.6. Where a notice pursuant to paragraph (a) of Subsection 8.5 is not complied with within five (5) calendar days, or such other time set by the Director or Officer, of the date of the notice, the Director or Officer may repair, remove, fill in or close up the Encroachment subject to the notice and restore the Highway to the condition the lands were in prior to the placing of the Encroachment at the expense of the Person subject to the notice.
- 8.7. In addition to Section 8.5 and notwithstanding anything in this by-law, any Person acting on behalf of, or under the authority of, the Town may, at any time and for any reason, remove or damage any Encroachment, or any part of an Encroachment, regardless of whether or not it is authorized or permitted under this by-law, that is not subject to an Encroachment Agreement.
9. **Liability**
- 9.1. The provisions of this by-law shall not be construed as relieving or limiting the responsibility or liability of any Person who undertakes or causes any activities, works or Encroachment on any Highway. Likewise the provisions of this by-law shall not be construed as imposing on the Town, its officers, employees or

agents, any responsibility or liability by reason of approval or inaction with respect to any Application, ROP or Encroachment.

- 9.2. Any item or Encroachment, regardless of whether or not it is authorized or permitted under this by-law, placed or left on any Highway is at the complete risk and responsibility of the Person leaving or placing, or causing it to be placed or left, on the Highway. The Town, its officers, employees or agents, are not responsible or liable for any repair or replacement of any items, ROP works or Encroachment removed or damaged as a result of any Town undertakings, activities, or activities by agents or contractors on behalf of the Town, including any construction, reconstruction, repair and maintenance activities and clearing or removing of litter, graffiti, posters, snow or ice, and any other actions taken by the Town, including any actions taken and the removal of any works or Encroachments under the authority of this by-law.
- 9.3. Neither, the granting of any ROP, permission for an Encroachment, approving any Application, entering into an Encroachment Agreement, nor any renewal or extension of the above, is intended to and shall not be construed as granting any property rights over any Highway or Town property, or permission or consent by the Town to contravene or fail to observe or comply with any laws of Canada or Ontario or any other by-law of the Town or the Regional Municipality of York.

10. Administration and Enforcement

- 10.1. The Director shall be responsible for and is delegated the power to administer and enforce this by-law, including prescribing the content of any forms or other documents required under this by-law, setting conditions of ROPs and Encroachment Agreements, permitting Encroachments, issuing any ROPs and entering into any agreements all as pursuant to this by-law.
- 10.2. Without limiting anything in this by-law, the Director may process any Applications subject to any policies or procedures established by the Director, and may require additional or increased fees to process Applications on urgent or expedited basis or to conduct additional reviews.
- 10.3. The Director and Officers of the Town are hereby delegated the authority to enforce this by-law, including the authority to conduct inspections pursuant to this by-law, the Act, as amended, and any other applicable by-law or legislation.
- 10.4. The Director is authorized to delegate responsibilities for the administration and enforcement of this by-law to any Town staff or external third parties deemed to be qualified and appropriate by the Director for such purposes.

11. Power of Entry, Inspection, Prohibitions

- 11.1. An Officer, or any other individual authorized to enforce this by-law on behalf of the Town, may at any reasonable time enter upon any land for the purpose of carrying out an inspection to determine whether the following are being complied with:
- (a) this by-law;
 - (b) any ROP or agreement issued pursuant to this by-law,
 - (c) any direction or order under this by-law; or
 - (d) an order issued under Section 431 of the Act.

- 11.2. Where an inspection is conducted pursuant to this Section, an Officer or any other individual authorized to enforce this by-law on behalf of the Town, may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
 - (c) require information from any Person concerning a matter related to the inspection; and
 - (d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- 11.3. No Person shall hinder or obstruct or attempt to hinder or obstruct the Town, its employees, officers or agents from carrying out any powers or duties under this by-law.
- 11.4. No Person shall fail to comply with, or contravene, any order or direction issued by the Town pursuant to this by-law or the Act.
- 11.5. Where an Officer, or an individual authorized to enforce this by-law, has reasonable grounds to believe that an offence has been committed by any Person, they may require the name, address and proof of identity of that Person, and the Person shall supply the required information.
- 11.6. No Person shall decline or neglect to give, produce or deliver any access, information, document or other thing that is requested by the Town pursuant to this by-law.
- 11.7. No Person shall knowingly make, participate in, assent to or acquiesce in the provision of false information in a statement, affidavit, application or other document prepared, submitted or filed under this by-law.

12. **Orders**

- 12.1. Where any Officer is satisfied that a contravention of this by-law has occurred, such Officer may make an order requiring the Person who caused or permitted such contravention, or the Owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity and/or to do work to correct the contravention.
- 12.2. An order pursuant to Subsection 12.1 shall set out the following:
- (a) reasonable particulars identifying the location of the land on which the contravention occurred;
 - (b) reasonable particulars of the contravention;
 - (c) what is required of the Person subject to the order (i.e., what activity is to be seized and/or actions or work to be done);
- the date by which there must be compliance with the order and/or, if any work is ordered, the date by which any such work must be done; and
- information regarding the Town's contact Person.

12.3. An order pursuant to Subsection 12.1 shall be deemed to have been received upon:

- (a) Personal service of the order to the Person being served; or
- (b) the fifth (5th) day after the order is sent by registered mail to the last known address of the Person who is subject to the order.

13. Remedial Action and Cost Recovery

13.1. Wherever this by-law or an order issued under this by-law directs or requires any matter or thing to be done by any Person within a specified time period, in default of it being done by the Person directed or required to do it, the action may be taken under the direction of the Director or an Officer at that Person's expense and the Town may recover the costs incurred through a legal action or by recovering the costs in the same manner as taxes.

13.2. For the purposes of taking remedial action under Subsection 13.1, the Town, its staff and/or its agents may enter, at any reasonable time, upon any lands on which a default to carry out a required thing or matter occurred.

13.3. Without limiting anything in this by-law, the Director may undertake, or cause to be done, any action deemed necessary by the Director to correct and/or remedy anything resulting from the operations or activities that were conducted with respect to a ROP or an Encroachment Agreement at the expense of the Person responsible for or holding the associated ROP or Encroachment Agreement.

13.4. Where a security has been provided to the Town with respect to a ROP or an Encroachment Agreement permit, the Town may:

- (a) draw upon or use such security to recover any costs incurred by the Town to remedy or address any contravention of this by-law, any non-compliance with an order issued pursuant to this by-law or any contravention of any term or condition of a ROP or Encroachment Agreement;
- (b) upon the failure by the Person subject to a ROP or Encroachment Agreement to complete all or part of the works in the time stipulated in any such ROP or Encroachment Agreement, draw upon the securities deposited and use the funds to arrange for the completion of the said works, or any part thereof;
- (c) upon the failure by the Person subject to a ROP or Encroachment Agreement to install, repair, maintain or decommission a specific part of the works as requested by the Town, draw upon the securities deposited and use the funds to arrange for the completion of the said works, or any part thereof;
- (d) in the case of emergency repairs or clean-up, undertake the necessary works at the expense of the Person subject to a ROP or Encroachment Agreement and draw upon the securities to pay for such works or reimburse itself for any resulting costs incurred by the Town;
- (e) upon the failure by the Person subject to a ROP or Encroachment Agreement to restore a Highway to a condition satisfactory to the Director where a ROP or Encroachment Agreement has expired, been cancelled or

revoked, draw upon or use such security to recover any costs incurred by the Town to restore the site to the Director's satisfaction.

14. Offences and Penalties

- 14.1. Every Person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 14.2. Every Person who contravenes any order issued pursuant to this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 14.3. If a corporation has contravened a provision of this by-law, including an order issued under this by-law, every director and officer who knowingly concurred in such a contravention is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 14.4. Pursuant to Subsection 429(2) of the Act, all contraventions of this by-law or orders issued under this by-law are designated as multiple offences and continuing offences. If a contravention of any provision of this by-law has not been corrected, or an order issued under this by-law has not been complied with, the contravention of such a provision or an order shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected or an order not complied with. A multiple offence is an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.
- 14.5. In addition to fines under this Section, a Person convicted of an offence under this by-law may be liable to a special fine in the amount of the economic advantage or gain that such a Person obtained from the contravention of this by-law.
- 14.6. Where a Person is convicted of an offence under this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted.

15. Administrative Penalties

- 15.1. Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this by-law, an individual authorized to enforce this by-law on behalf of the Town may issue an administrative penalty to the Person who has contravened this by-law.
- 15.2. Individuals authorized to enforce this by-law on behalf of the Town have the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. If an administrative penalty is issued to a Person for the breach, no charge shall be laid against that same Person for the same breach.
- 15.3. The amount of the administrative penalty for a breach of a provision of this by-law, shall be as established pursuant to applicable Town by-laws.

- 15.4. A Person who is issued an administrative penalty shall be subject to the procedures as provided for in the applicable Town by-laws relating to administrative penalties.
- 15.5. An administrative penalty imposed on a Person pursuant to this by-law that is not paid within fifteen (15) days after the day it becomes due and payable, constitutes a debt of the Person to the Town and may be added to a municipal tax roll and collected in the same manner as municipal taxes.
16. **Interpretation**
- 16.1. In this by-law, unless the context otherwise requires, words importing the singular number shall include the plural and words importing the masculine gender shall include the feminine.
17. **Severability**
- 17.1. If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid or to be of no force and effect, it is the intention of the Town in enacting this by-law that such provision or part of a provision shall be severable, and such a decision shall not affect the validity of the remaining sections, subsections, clauses or phrases of this by-law.
18. **Repeal**
- 18.1. By-laws Number 4734-05.P, Number 4744-05.P and Number 5733-15, all as amended, are hereby repealed.
19. **Short Title**
- 19.1. This by-law shall be known and may be cited as the "Occupancy and Encroachment of Highways By-law".
20. **Effective Date**
- 20.1. This by-law comes into full force and effect on the date of final passage hereof.

Enacted by Town of Aurora Council this 27th day of October, 2020.

Tom Mrakas, Mayor

Michael de Rond, Town Clerk